

EDMUND CHAN KAI KHOON

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v.

ABRIZAH ABDULLAH & ORS

COURT OF APPEAL, PUTRAJAYA
DENIS ONG JCA
TENGKU BAHARUDIN SHAH JCA
AZMEL MAAMOR JCA
[CIVIL APPEAL NO: P-02-971-2004]
3 MAY 2007

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COMPANY LAW: *Shares - Allotment of shares - Evidence - Proof of allotment and subscription - Whether allotted shares properly subscribed by plaintiffs shareholders - Whether subscribed shares not handed over to plaintiffs*

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This appeal is similar to and involved the same issues as the appeal in Rayuan Sivil No. P-02-970-2004, except that the plaintiffs herein were the family members of Datuk Hj Mohd Yusof Latif. The plaintiffs' claim is for a declaratory order that they were the respective owners of 2,645,758, 266,812 and 874,744 shares in Palmco. In essence, it was the plaintiffs' case that, upon Palmco issuing the new rights issue shares in question, and upon the directors of Palmco agreeing to subscribe to the full entitlement thereunder, the plaintiffs had handed over their entire allotment documents in respect of those shares to the defendant, the managing director of Palmco at the material time, but that none of the shares had been returned to them. Upon the evidence before him, the learned judge came to the findings that the plaintiffs had exercised their right to purchase the rights issue within the stipulated time, and that financial arrangements were made by the Chan family to facilitate the plaintiffs to purchase the said shares. The learned judge also dismissed as against the weight of evidence the defendant's story that he merely acted as a 'post box' on behalf of his brother Datuk Robert Chan or that he had no knowledge of the transactions. This being the case, and there being no evidence that the shares were handed back to the plaintiffs, the learned judge gave judgment to the plaintiffs. Being dissatisfied, the defendant appealed.

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A **Held (dismissing appeal):**

Per Azmel Maamor JCA delivering the judgment of the court

- (1) Having scrutinized the facts and circumstances of this case *vis-à-vis* the findings of facts of the learned judge, his decision should not be disturbed. (para 17)
- (2) The plaintiffs' claim against the defendant had been sufficiently substantiated by documentary evidence while the defendant's defence was a bare denial without any document to support it. The defendant's attempt to discredit PW1's evidence and the documents he produced had been correctly rejected by the learned judge. (para 17)

Bahasa Malaysia translation of headnotes

- Rayuan ini adalah sama dengan dan melibatkan isu-isu yang sama seperti rayuan di Rayuan Sivil No. P-02-970-2004, kecuali bahawa plaintiff-plaintiff di sini adalah terdiri dari ahli keluarga Datuk Mohd Yusof Latif. Tuntutan plaintiff-plaintiff adalah untuk suatu perisytiharan bahawa masing-masing mereka adalah pemilik kepada 2,645,758, 266,812 dan 874,744 saham di dalam Palmco. Secara pentingnya, kes plaintiff-plaintiff adalah bahawa, ekoran pengeluaran isu-isu terbitan tersebut oleh Palmco, dan ekoran keputusan pengarah-pengarah Palmco untuk membeli kesemua saham yang mereka berhak, plaintiff-plaintiff telah mengemukakan kesemua dokumen mengenai agihan saham mereka kepada defendan, selaku Pengarah Urusan Palmco, tetapi saham-saham tersebut sampai sekarang tidak diserahkan kepada mereka. Berdasarkan keterangan di hadapannya, yang arif hakim memutuskan bahawa plaintiff-plaintiff telah melaksanakan hak mereka membeli isu-isu terbitan dalam tempoh yang ditetapkan, dan bahawa pemerolehan dana bagi pembelian tersebut telah diuruskan oleh keluarga Chan. Yang arif hakim juga menolak sebagai bertentang dengan arus keterangan cerita defendan bahawa beliau hanya bertindak sebagai 'peti pos' bagi pihak abangnya, Datuk Robert Chan, dan tidak tahu menahu tentang transaksi-transaksi. Dalam keadaan sedemikian, dan kerana tiada keterangan bahawa saham-saham telah dikembalikan kepada plaintiff-plaintiff, maka yang arif hakim memberikan penghakiman kepada plaintiff-plaintiff. Merasa tidak puas hati, defendan merayu.

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Diputuskan (menolak rayuan)

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Oleh Azmel Maamor HMR menyampaikan penghakiman mahkamah:

(1) Meneliti fakta dan halkeadaan kes *vis-à-vis* dapatan-dapatan fakta yang dibuat oleh yang arif hakim, keputusan beliau tidak seharusnya diganggu.

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(2) Tuntutan plaintiff-plaintiff terhadap defendan telah dibuktikan secukupnya oleh keterangan dokumentari sementara pembelaan defendan adalah satu penyangkalan kosong semata-mata tanpa disokong oleh apa-apa dokumen. Percubaan defendan untuk mencela keterangan dan dokumen yang dikemukakan PW1 telah ditolak dengan betulnya oleh yang arif hakim.

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Case(s) referred to:

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Sivalingam Periasamy v. Periasamy & Anor [1996] 4 CLJ 545 CA (*refd*)

For the appellants - Tan Swee Cheng; M/s Cheong Wai Meng & Van Buerle
For the respondent - Surinder Singh Gill; M/s Ong & Manecksha

[Appeal from High Court, Pulau Pinang; Suit No: 22-223-1990]

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Reported by WA Sharif

JUDGMENT

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Azmel Maamor JCA:

[1] This appeal is similar to another appeal *vide* Rayuan Sivil No. P-02-970-2004 involving the same defendant but the plaintiffs are the family members of Datuk Hj. Mohd. Yusof Latif. The issues involved are exactly the same. It was agreed by all parties that the decision of this court on this appeal would be binding on the other appeal.

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[2] The three plaintiffs, (the respondents in this appeal) sought for a declaratory order that the plaintiffs are the respective owners of 2,645,758; 266,812 and 874,744 shares in Palmco Holdings Bhd (Palmco) respectively held by the defendant, (the appellant in this appeal). The plaintiffs also asked that those shares be delivered to them by the defendant.

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A Background Of The Case

B [3] At the time when Palmco was first listed in 1981 it was run by members of 3 families namely, the Chan family, Syed Shahabudin family and Yusof Latif family. The members of these 3 families owned substantial shares of Palmco especially the Chan family. The pioneer directors of Palmco in 1981 were Edmund Chan (the defendant), his brother Datuk Robert Chan, Syed Azahari bin Shahabudin (Syed) and Datuk Hj. Mohd. Yusof Latif. The 3 plaintiffs are related to Syed, the 1st plaintiff being his wife, the 2nd plaintiff, his brother and the 3rd plaintiff, their family company. All the 3 plaintiffs are shareholders of Palmco.

D [4] In June 1984 Palmco declared a rights issue of 3 shares for every 5 shares held at RM1 per share. The plaintiffs, by virtue of being shareholders of Palmco were allotted 2,645,758, 266,812 and 874,744 respectively. The directors of Palmco had collectively agreed to subscribe to the full entitlement under the proposed rights issue. In compliance with the arrangement Syed personally handed over the entire allotment documents and the completed Provisional Allotment Letters (PALs) of the plaintiffs to the defendant who was the managing director of Palmco. This was done through 3 memos one dated 14 July 1984 and 2 dated 18 July 1984. The defendant's acknowledgement of receipt of the memos was clearly proved by his signature appearing on each of the 3 memos.

F [5] It was the plaintiffs' claim that the said allotted shares would be returned to the respective plaintiffs upon their acceptance of the same at the price of RM1 per share. Though the plaintiffs on 31 May 1990 had requested the defendant to return the said shares to them the defendant refused to do so.

Plaintiff's Case

H [6] The Chan family, the Syed family and the Yussof Latif family were in control of Palmco. They worked harmoniously and were a close knit corporate unit until the end of 1989. When the rights issue were declared in June 1984, they were taken up as one collective effort for the benefit of the 3 families. It was because of this that the allotment documents and PALs were handed to the defendant whose task was to do the needful to achieve the full allotment of the shares. The defendant and the Chan family agreed to source the necessary financial loans and also agreed to

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pledge their shares on behalf of the plaintiffs. From 1984 to end of 1989 there were regular meetings of the directors of Palmco wherein the Chan family would give details of all the Palmco shares. Any request for payment of interest of the loans from the shareholders for the allotted shares were done by memos from the defendant to Syed from time to time.

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[7] The total cost for the purchase of the Palmco rights issue shares for all the shareholders was in the region of RM25.5 million and arrangements for repayments were made by the Chan family. The plaintiffs dealt with the defendant who acted on behalf of the Chan family.

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Defendant's Case

[8] The defendant denied ever receiving the said shares. The defendant also alleged that the plaintiffs never exercised their rights to purchase the rights issue within the stipulated period. The defendant said he merely acted as a "Post Box" on behalf of his brother Datuk Robert Chan. He denied having knowledge of what happened thereafter or as to who made the financial arrangements. He informed the court that the directors and shareholders made their own personal arrangement to obtain financing for the rights issue.

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Findings Of The High Court

[9] The High Court Judge arrived at a factual finding that the defendant had received the rights issue shares of the plaintiffs. This was based on the memo from Syed to the defendant dated 30 August 1984. The learned judge also found that the plaintiffs had exercised their rights to purchase the rights issue within the stipulated time on the basis of the same memo.

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[10] Based on the facts the learned judge was satisfied that there were financial arrangements made by the Chan family to facilitate the plaintiffs to purchase the said shares. The memo issued by the defendant dated 1 October 1987 was one of the many memos issued by him showing the amount of weekly interest for principle loan, which each shareholder was obliged to pay. The defendant's attempt to explain that that payment of interest was for payment of property loan was totally rejected by the learned judge as there was no documentary evidence to substantiate such allegation.

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- A [11] The defendant's contention that the plaintiffs had not taken up the rights issue through the production of the Renunciation Form signed by the plaintiffs was also rejected by the court. On the other hand the learned judge accepted the explanation given by Syed (PW1) that the Renunciation Form was signed blank.
- B PW1 explained that it was signed blank by the plaintiffs in order the rights to the said shares could be transferred to the bank nominees as a collateral to facilitate the bank loans.

- C [12] The production of two letters by the plaintiffs had further convinced the learned judge to decide in favour of the plaintiff. The 1st letter dated 14 January 1985 was from B.B.L. (Nominees) Pte. Ltd., Singapore to the 1st plaintiff. The relevant paragraph of the letter clearly indicates that the 1st plaintiff did pledge her shares with the said bank. That paragraph states:

- D For the purpose of our records, we shall be pleased if you could kindly confirm the outstanding shares pledged with us as at the end of our financial year 31st December 1984.

- E The said letter went on to state that the amount of the 1st plaintiff's Palmco shares with the said bank was 2,645,758 shares.

- F [13] The other letter dated 31 July 1986 was written by 1st plaintiff to Bangkok Bank Ltd., Singapore. This letter indicates the closeness of the relationship between the Syed family and the Chan family where the dividends derived was to be put in the account of M/s. Robert Steven & Sons (Pte) Ltd.

- G Would appreciate if you could claim for me the dividend for the Palmco Holdings Bhd. shares pledged with you in respect of the term loan in the name of Datuk Robert Chan Woot Khoon and Mr. Steven Chan Fook Koon. The cheque is to be made out to M/s. Robert Steven & Sons (Pte) Ltd. and Mr. Allen Ang is authorised to collect the cheque on our behalf.

- H On the basis of these 2 letters it was very apparent regarding the involvement of the Syed and the Chan families on the loans taken from the bank. The learned judge became quite convinced that the 1st plaintiff was entitled to the said shares which members of the Chan family had pledged for their own use or for the use of the 1st plaintiff. The defendant's explanation as to the purpose of these letters was found to be unsatisfactory by the learned judge.
- I The defendant's explanation that the loans were in respect of properties was found to be unacceptable by the judge.

[14] On the defendant's contention that he merely acted as a "Post Box" on behalf of his brother Datuk Robert Chan and as such he had no knowledge of the transaction the learned judge dismissed it as being against the weight of evidence. Furthermore Datuk Robert Chan, who was throughout present in court, was not called to give evidence to support the defendant's contention.

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[15] The learned judge said that he was satisfied that the said shares had been handed over by the plaintiffs to the defendant. But he could not find any evidence whatsoever to show that those shares were handed back to the plaintiffs respectively. In the circumstances the learned judge accordingly gave judgment in favour of the plaintiffs. Against that decision the defendant appealed to this court.

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Finding Of This Court

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[16] The issues in this appeal are purely based on facts. It is trite law that the appellate court would not readily interfere with the findings of facts arrived at by the court of first instance to which the law entrusts the primary task of evaluation of the evidence. (See the case of *Sivalingam a/l Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545).

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[17] As commented by the learned judge this case is "simple and uncomplicated", and we totally agree with him. After having carefully scrutinized the facts and circumstances of this case *vis-a-vis* the findings of facts of the learned judge we arrived at the conclusion that his decision should not be disturbed. The plaintiffs' claim against the defendant had been sufficiently substantiated by documentary evidence while the defendant's defence was a bare denial without any document to support it. The defendant's attempt to discredit PW1's evidence and the documents he produced had been correctly rejected by the learned judge.

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[18] In the light of the circumstances as mentioned above we dismiss the defendant's appeal with costs. Deposit is to be paid to the plaintiffs/respondents to account of taxed costs.

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[19] My learned brothers Denis Ong Jiew Fook and Tengku Baharudin Shah bin Tengku Mahmud JJCA have seen this judgment in the draft and have expressed their agreement with it.

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